

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

**EDDIE JOSEPH BROWN, JR., #87813**

**PETITIONER**

**v.**

**CAUSE NO. 1:17CV308-LG-MTP**

**MARSHALL TURNER**

**RESPONDENT**

**ORDER ADOPTING REPORT AND RECOMMENDATION  
AND DISMISSING SUCCESSIVE PETITION**

This cause comes before the Court on the Report and Recommendation of United States Magistrate Judge Michael Parker, entered May 9, 2018. Magistrate Judge Parker reviewed the proceedings in this case and determined that prior to filing this federal habeas petition<sup>1</sup> pursuant to 28 U.S.C. § 2254, Brown had filed an earlier federal habeas petition challenging the same conviction and sentence. Because Brown did not show that he had been given permission by the Fifth Circuit Court of Appeals to file a successive federal habeas petition, Magistrate Judge Parker recommended granting the Respondent's [6] Motion to Dismiss.

Brown filed an objection to the Magistrate Judge's Report and Recommendation, but he states only that "[t]he Magistrate Judge's finding[s] are incorrect." (Pet. Obj. 1, ECF No. 33). The Court must review any objected-to portions of a Report and Recommendation de novo. *See Kreimerman v. Casa Veerkamp, S.A. de C.V.*, 22 F.3d 634, 646 (5th Cir. 1994); *Longmire v. Guste*, 921 F.2d 620, 623 (5th Cir. 1991). Such a review means that the Court will consider the

---

<sup>1</sup> Judge Parker reached this conclusion as to both the original petition for habeas corpus and Brown's proposed amended petition.

record which has been developed before the magistrate judge and make its own determination on the basis of that record. *United States v. Raddatz*, 447 U.S. 667, 675 (1980). The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. U. S. Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987).

Petitioner Brown has made a conclusive and general objection, which does not merit de novo review. Instead, the Court need only determine whether Magistrate Judge Parker's findings and conclusions are clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989). Magistrate Judge Parker's finding that Brown has already litigated a federal habeas challenge to his 2012 state conviction and sentence is neither clearly erroneous nor contrary to law. The Court ruled on the merits of Brown's grounds for relief from his 2012 conviction and sentence in his first petition. *See Brown v. Byrd*, No. 1:15cv115-LG-RHW (S.D. Miss. Feb. 3, 2016). If he wishes to challenge his conviction and sentence on new grounds, he must seek permission from the Fifth Circuit Court of Appeals to do so. The Court may consider a second or successive § 2254 petition only upon certification from the United States Court of Appeals for the Fifth Circuit that the claims in the motion meet certain criteria. See 28 U.S.C. § 2244(b)(3) and (4). Brown did not submit any evidence that he obtained certification from the United States Court of Appeals for the Fifth Circuit to file a second or successive § 2254 motion. Under these circumstances, the Court

may either dismiss the petition for lack of jurisdiction or transfer the petition to the Fifth Circuit. *United States v. Key*, 205 F.3d 773, 774 (5th Cir. 2000). The Court will adopt Magistrate Judge Parker's recommendation that the Respondent's Motion to Dismiss should be granted, this case dismissed, and all remaining pending motions denied as moot.

**IT IS THEREFORE ORDERED AND ADJUDGED** that the [31] Report and Recommendation of United States Magistrate Judge Michael Parker entered in this cause on May 9, 2018 should be, and the same hereby is, **ADOPTED** as the finding of this Court.

**IT IS FURTHER ORDERED AND ADJUDGED** that the [6] Motion to Dismiss filed by the Respondent is **GRANTED**. This action is **DISMISSED**. Any other pending motion is **DENIED AS MOOT**.

**SO ORDERED AND ADJUDGED** this the 15<sup>th</sup> day of June, 2018.

*s/ Louis Guirola, Jr.*

LOUIS GUIROLA, JR.  
UNITED STATES DISTRICT JUDGE